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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/517,126	03/08/2006	Gerd Schmaucks	E-1048	2783
20311	7590	12/16/2009	EXAMINER	
LUCAS & MERCANTI, LLP			LACLAIR, DARCY D	
475 PARK AVENUE SOUTH			ART UNIT	PAPER NUMBER
15TH FLOOR			1796	
NEW YORK, NY 10016				
NOTIFICATION DATE		DELIVERY MODE		
12/16/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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info@lmipilaw.com

Attachment to Advisory Action

1. Applicants' amendment filed **11/23/2009** has not been entered given that it raises new issues that would require further consideration and/or search.

With respect to other new issues, applicant has amended independent Claims 4 and 7 to recite a Markush group required as a part of the resin. It is the examiner's position that this is a new issue since the limitations of the claim have changed, specifically, the amended Markush group has eliminated unpatentable alternative elastomeric resins discussed in the previous rejection, and mandated previously unsearched alternatives. Therefore, the amendment would require further search and/or consideration.

2. As the amendment is not being entered, those of applicant's arguments with regard to overcoming the prior art rejections based on the possibility of entry of amendment are rendered moot.

3. In the interest of compact prosecution, the following advisories are given:

As the combination of **Mitsuhashi et al. (JP 09012888 A)** in view of **Underwood et al. (US 4,201,060)** discussed in the previously applied rejection teaches the use of a silicon based elastomer, this rejection would have been overcome had the amendment been entered. This does not, however, render the claims allowable, as the members of the amended Markush group must be examined.

It is noted that Underwood teaches a blend of a thermoplastic resin with another material, e.g. an elastomer. (See col 2 line 38-39) Applicant's claims currently recite an elastomeric resin **comprising** a polymer selected from the Markush group, but this does not preclude the presence of other resins, such as Underwood's PVC, as comprising language is open to other components. Additionally, the preferred composition of Underwood includes PVC (polyvinyl chloride) with an elastomer. U.S. Pat. No. 2,297,194, Badum (1942) describes one of the earliest successful attempts to plasticize PVC so that it could be used as a cable insulation. In this case the plasticizer was a copolymer of butadiene and acrylonitrile. This was also reported by Emmett, Industrial Engineering Chemistry, 36, pages 730-4 (1944), who describes PVC plasticized with butadiene/acrylonitrile rubber. The blends were made by milling masterbatches of the polymers. Therefore applicant's species NBR blended with PVC would be obvious to one of ordinary skill in the art over a combination of Underwood with either of these references, as Underwood teaches PVC with an elastomer, and the earliest successful attempts at such a combination is PVC with NBR.

/D. D. L./
Examiner, Art Unit 1796

/Vasu Jagannathan/
Supervisory Patent Examiner, Art Unit 1796